



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

A Report on Actions Taken in 2005 to Implement Government Code Section 12812.2

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CAL/EPA ENFORCEMENT PROGRAM UPDATE
A Report on Actions Taken in 2005
to Implement Government Code Section 12812.2

Government Code section 12812.2 defines the duties of the California Environmental Protection Agency (Cal/EPA) Deputy Secretary for Law Enforcement and Counsel as follows:

1. Develop a program to ensure that Cal/EPA, its entities, and local government take consistent, effective, and coordinated enforcement actions. The program shall include training of inspection personnel to ensure consistent, effective, and coordinated enforcement.
2. Establish a cross media enforcement unit to assist Cal/EPA, its entities, and local government to investigate and prepare matters for enforcement action.
3. Refer violations of environmental law or regulation to prosecutors such as the U.S. Attorney, Attorney General or District Attorneys.

As required by subsection (c), this report provides an update on actions taken during 2005 to implement this section.

Enforcement Initiative

In October 2004, then Cal/EPA Secretary Terry Tamminen directed the first steps to implement Cal/EPA's "Enforcement Initiative." Nine teams were established to carry out specific enforcement improvement tasks. This memo is available on the Internet at <http://www.calepa.ca.gov/Enforcement/Initiative/default.htm>.

As detailed below and in the *Status Report on the Implementation of the Cross-Agency Enforcement Initiative* (available at <http://www.calepa.ca.gov/publications/Reports/Mandated/>), each of the Enforcement Initiative Teams has made significant progress toward achieving their goals.

1. Single Complaint Tracking System Team

The Single Complaint Tracking System Team has developed a single on line, complaint tracking system for all of Cal/EPA state entities (all six Cal/EPA Boards, Departments and Office). This system can be accessed through the link "File an Environmental Complaint" on any of Cal/EPA's or the Boards, Departments and Office's Internet home pages. It provides a form to receive complaints regarding any alleged environmental violations.

2. Enforcement Operational Plan Team

In 2005, the Enforcement Operational Plan Team accomplished the following:

- Developed an outline and key concepts of a model enforcement program
- Assessed existing legal authorities, gaps, and improvements needed
- Developed common definitions of formal and informal enforcement actions
- Identified essential enforcement policies to be included in the model plan.

3. Enforcement Intelligence Team

The Enforcement Intelligence Team developed a variety of information resources and tools to assist enforcement staff, including a case development checklist and a catalogue of on-line information resources that has been made available through an internal (intranet) web page. In addition, the team has developed and delivered training on the use of these informational tools. The Team is currently developing methods, using the available information, to identify violations outside normal inspection routines and is working on investigative resources to detect fraud.

4. Integrated Data Dictionary Team

The Integrated Data Dictionary Team authored a policy, adopted across Cal/EPA that requires all programs to conform to the requirements of the data dictionary elements in Title 27 of the California Code of Regulations. These regulations were designed to govern how the Unified Program agencies collect and report data. The team also established a steering team of representatives from all Cal/EPA Boards and Departments that is responsible for assuring all new enforcement data types conform to these standards, and to ensure that the Cal/EPA data dictionary is maintained.

5. Environmental Data Exchange Team

The Environmental Data Exchange Team has developed a pilot shared database system using facility information from the Air Resources Board, Department of Toxic Substances Control, the Waste Board and the Water Boards. This system was made available to staff through an internal (Intranet) web page in December 2005. The pilot system is a GIS based system that allows the user to identify all sites of regulatory interest in proximity to an identified address.

6. Geographical Information Systems (GIS) Contracts Team

The GIS Contracts Team has centralized the procurement and license management for streets data products within Cal/EPA using the Water Board as the central purchasing agent and developed a web-based application to track ordering, approval and delivery of software. In addition, the team has installed a shared license server and tested shared access and increased the use of existing licenses (making it

available to more enforcement staff). Through these efforts, the GIS Contracts Team has also realized a 15% cost savings through the consolidated license procurement.

7. Enforcement Training Team

The Enforcement Training Team accomplished the following:

- Developed a list of recommended basic courses for inspectors
- Drafted a training needs assessment
- Teamed with DTSC and the California Hazardous Materials Investigators Association to deliver local training
- Delivered its first on-line enforcement training course
- Developed an on-line, consolidated enforcement training calendar
- Developed an enforcement "library" of available training materials
- Made videotapes of training sessions to build the enforcement library
- Coordinated with local task forces to identify training needs and to deliver local training.

8. Enforceable Permits Team

The Enforceable Permits Team drafted a survey to be conducted in 2006 to identify key issues relating to enforcing permits. The results of the survey will be used to identify key issues and develop recommendations.

The Team is also developing a pilot project to form a team of enforcement and facility permitting staff to work cooperatively to identify key compliance elements.

9. Communication Strategy Team

The Communication Strategy Team has engaged in multiple strategies to improve external and internal communications. These strategies include the development of criteria and procedures to be used by enforcement personnel to create press releases about significant enforcement activities and actions.

For those enforcement activities not likely to generate significant press coverage, the Team is developing a "template" to highlight completed enforcement cases. This template will allow the collection of information from multiple cases into a monthly "history" of cases that can be accessed by the media and the public through the Cal/EPA Internet site, for use as background data for a press story.

Information regarding enforcement has been made available to all Cal/EPA staff through an Intranet web page. Monthly enforcement newsletters (the first published in December 2005) include pertinent enforcement information and current enforcement issues.

Actions In Addition to the Enforcement Initiative

Enforcement Training

Cal/EPA took several steps to lower costs, improve efficiencies and delivery of environmental enforcement training. Cal/EPA was able to fund several of these training events using money from the settlement of an enforcement action in which a portion of the settlement funds were specifically designated for use in training. These funds were the source of the enforcement scholarships referred to below.

1. The Cal/EPA Basic Inspector Academy

The Academy provides baseline knowledge and works in conjunction with existing program specific training to prepare state and local environmental regulatory staff to conduct efficient and professional inspections. Several changes were made to reduce delivery costs of this course. The two week training course was reduced to four days in class plus six hours of on line training. The Academy is now offered three times during the year instead of quarterly and registration fees of \$50 were added. In 2005, the Academy was conducted twice in Sacramento and once in Los Angeles.

2. The Cal/EPA Environmental Enforcement Symposium

This annual four day training event is open to government, industry, and members of the public. Training sessions cover enforcement programs specific to each of Cal/EPA's Boards and Departments and their local counterparts. Mock administrative, civil, and criminal proceedings are presented. The Symposium certified by the Commission on Peace Officer Standards and Training and provides up-to-date information on environmental enforcement issues. A total of 138 individuals attended the Symposium held May 2005 in Irvine. Using enforcement scholarships, Cal/EPA paid for all speaker travel costs and for registration and/or travel costs for 66 enforcement staff from state and local environmental regulatory programs.

3. The 8th Annual Unified Program/Underground Storage Tank Conference

The Unified Program (CUPA) consolidates permits, inspections, and enforcement activities for six hazardous materials, hazardous waste and emergency management programs. at the Conference held in Burlingame, California. This conference presented over 60 technical sessions on updates and included a dedicated enforcement "track" of sessions that Cal/EPA coordinates. Cal/EPA awarded 90 enforcement training scholarships to local CUPA staff and paid for travel costs for speakers on enforcement subjects. The enforcement track classes were recorded and will be added to the Cal/EPA enforcement training library.

4. Specialized Enforcement Training

Cal/EPA continued offering free monthly enforcement “brown bag” training sessions in 2005 at its headquarters building. Topics included recycling fraud, determining the economic benefit of violations, environmental law issues with Indian reservations and internet resources for enforcement. The brown bags were held at the Cal/EPA headquarters building and were broadcast over the Cal/EPA intranet. In 2005, all the presentations were recorded so that copies could be provided to those unable to attend the training. These recordings were placed in the Cal/EPA enforcement library.

Cal/EPA provided scholarships for state and local environmental enforcement staff to attend training given by the Western States Project, an EPA funded training entity, for “Introduction to Environmental Enforcement” (17 scholarships) and “Introduction to Criminal Investigation” (25 scholarships).

The Environmental Circuit Prosecutor Project

The Environmental Circuit Prosecutor Project is a cooperative project of the California Environmental Protection Agency and the California District Attorneys Association as codified in Penal Code section 14309. The Project fills the gap in the enforcement of environmental laws in California’s small counties by providing environmental prosecutors to District Attorneys in rural areas. During 2005, Cal/EPA continued to provide the majority of funding for the Project. In addition to the funding provided by Penal Code section 14300 described below, Cal/EPA continued its support of the Project in the amount of a \$300,000 contract in fiscal year 2004-2005.

Penal Code § 14300: The Environmental Enforcement and Training Act

This Act provides a method for the distribution of grant funds for enforcement, enforcement training and the Environmental Circuit Prosecutor Project. Funding for the account comes from money designated for such use in state or federal court judgments in enforcement cases. These contributions are often referred to as Supplemental Environmental Projects or “SEPs.” Private contributions may also be received. No General Fund money is used in this account.

September 30, 2005 was chosen the distribution date for 2005. As of the date \$1,018,061.83 was in the account, which was distributed as required by statute as follows:

- 25% (\$254,515.46) to the Environmental Circuit Prosecutor Project
- 25% (\$254,515.46) to the California District Attorneys Association, for training
- \$100,000 to the Peace Officers Standards Training Commission, for training
- Remainder (\$409,030.30) to Cal/EPA to be awarded as grants

Cal/EPA Grants

Cal/EPA awarded grants in the amount of \$409,030.30. The California District Attorneys Association requested additional funds to support the Circuit Prosecutor Project. This request was approved in the amount of \$404,766.

An application was received from the Santa Rosa Fire Department, which is the CUPA for the City of Santa Rosa, to pay for the creation of hazardous materials educational and enforcement materials for Spanish speaking business owners and operators. This request was approved in the amount of \$4,265.

An application was received from the Santa Clara Fire Department, which is also CUPA, for funds to attend the annual CUP/UST Conference in Burlingame, California in February 2006. This application was denied but the applicants were encouraged to apply for other funds at Cal/EPA that are used to send regulators to enforcement training. The Santa Clara Fire Department was awarded scholarships to attend this training from other funds.

For more information, see www.calepa.ca.gov/Enforcement/Grants/2005/14300.

5. Other Enforcement Progress

Enforcement Staffing

The number of people assigned to enforcement tasks has increased through internal realignments of staff.

- The Water Boards created enforcement units at each of the Regional Boards. Staff assigned to enforcement increased from 17 positions in 2004 to 55 positions in 2005.
- The Air Resources Board added staff to focus enforcement efforts near the Mexican border and the ports where measured non-compliance rates are higher than in other parts of California.
- The Waste Board has hired staff to work on illegal dumping enforcement and is planning to create a fiduciary fraud enforcement unit to work on e-waste fraud issues.

Targeted Enforcement

Cal/EPA's enforcement programs have added a capability to detect violations outside their permitting routines, and have designed targeted enforcement at areas of highest environmental risk and highest non-compliance rates.

- The Department of Toxic Substances Control continued its successful "sting" operations to catch unlicensed hazardous waste transporters

- The Air Resources Board took enforcement action for the sales of engines that do not meet California emission requirements
- The Air Resources Board targeted enforcement near the border and ports where noncompliance rates are higher
- The Department of Pesticide Regulation targeted pesticides sales at retail and big box stores where the required pesticide mill tax is not being paid.

Referrals to Prosecutors

The Department of Pesticide Regulation developed a protocol for state and local pesticide regulators to follow that ensures that all priority investigations are referred to prosecutors for review for possible criminal prosecution. The other Cal/EPA Boards and Departments are working with prosecutors to develop similar protocols for all Cal/EPA programs. In addition, all Cal/EPA Boards and Departments have assigned one or more of their in house attorneys to focus on criminal case development and enforcement. Overall, criminal referrals from Cal/EPA increased in 2005 from previous years. Three “Cal/EPA Prosecutor Roundtables” were conducted where Cal/EPA enforcement managers, attorneys and prosecutors discussed referral protocols and specific cases.

Enforcement Field Presence

Cal/EPA established a Certified Unified Program Agency (CUPA) program in the remaining two counties (Imperial and Trinity) that had not yet been certified. The Department of Toxic Substances Control became the CUPAs for these two counties. Unified Program agencies carry out the permitting and inspection activities in six hazardous waste and hazardous materials programs. For the first time since the CUPA program’s inception in 1994, all 58 counties in the state have regulatory programs to ensure that hazardous wastes and hazardous materials are appropriately managed.

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